Office-Supreme Court, U.S.
FILED
DEC 31 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-438

In the Supreme Court of the United States

OCTOBER TERM, 1984

SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE, PETITIONER

v.

GERALD HILL, ET AL.

ON WRIT OF CERTIORARI TO THE MASSACHUSETTS SUPREME JUDICIAL COURT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The United States will address the following question:

Whether a prison disciplinary board's decision to revoke an inmate's good time credits must be based upon "some evidence" in order to comply with due process.

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INTEREST OF THE UNITED STATES

This case concerns the procedural protections that must be provided to a prison inmate in connection with a decision to revoke good time credits in which the inmate has a liberty interest. These credits are accumulated by a prisoner for good behavior, and have the effect of shortening his term of confinement. In *Wolff* v. *McDonnell*, 418 U.S. 539 (1974), this Court held that a prisoner can have a due process-protected liberty interest in good time credits. Under *Wolff* prison authorities must provide an inmate with notice, a hearing, and a written decision before re-

voking his good time credits. The court below relied upon *Wolff* in holding that due process also requires "judicial review of the sufficiency of the evidence" supporting a decision to revoke good time credits (Pet. App. A11). The United States has a direct interest in this issue because the statute governing federal prisoners' good time credits (18 U.S.C. 4161) has been found to create a liberty interest protected by due process. *Adams* v. *Gunnell*, 729 F.2d 362, 368 (5th Cir. 1984); *Jackson* v. *Carlson*, 707 F.2d 943, 946-947 (7th Cir. 1983), cert. denied, No. 83-5235 (Oct. 3, 1983); see also *Willis* v. *Ciccone*, 506 F.2d 1011 (8th Cir. 1974). This Court's decision, therefore, may affect disciplinary proceedings in federal penal institutions.

The United States also has a more general interest in the question we shall discuss. The government conducts a variety of administrative proceedings, and the analysis applied by the Court in this case could affect the procedural protections mandated in these other contexts.

STATEMENT

1. Respondents Gerald Hill and Joseph Crawford are inmates at the Massachusetts Correctional Institution, Walpole. Petitioner is the superintendent of that facility. In May 1982, respondents each received prison disciplinary reports charging them with assaulting another inmate (Pet. App. A5 & n.4).[1]

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[1] Respondents were charged with violating three provisions of the applicable regulations (103 Mass. Admin. Code § 430.22(18), (19) and (31) (1978):

> (18) Fighting with, assaulting or threatening another person with any offense against his person or property.

At separate hearings for each prisoner conducted on May 11, 1982, the prison disciplinary board heard the testimony of a prison guard, Sergeant Maguire, and received his written disciplinary report. The court below summarized the report as follows (Pet. App. A6-A7):

> [O]n May 2, 1982, Maguire heard an inmate twice say loudly, "What's going on?" He saw some commotion close to the other side of a door that had a window through which he had been looking. According to the report, Maguire quickly investigated and found an inmate bleeding from his mouth and suffering from a swollen eye. Dirt was strewn about the area, which was enclosed by a chain link fence. There were only three inmates other than the victim in the area at this time, and they were jogging away. Two of them were the [respondents]. From these observations, Maguire concluded that "one or more of these inmates did assault [the victim] and apparently acted as a group as they were all jogging away from the scene together."

Respondents presented some exculpatory evidence, but the board found that respondents had committed the offenses (Pet. App. A5-A6).[2] It recommended sanctions of fifteen days in isolated confinement and the loss of one hundred days of good time credits (Pet. App. A3; Pet. 5). On May 20, 1982, petitioner

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(19) Use of obscene, abusive, or threatening language, action or gesture to any inmate or staff member.

* * * * *

(31) Attempting to commit any of the above offenses, aiding another person to commit any of the above offenses, making plans to commit any of the above offenses * * *.

[2] The board also found the third inmate observed by Sergeant Maguire liable for the offenses (Pet. 5).

denied respondents' appeals of the board's decision (Pet. 5-6).

2. On June 8, 1982, respondents filed complaints in Massachusetts state superior court asserting that their federal constitutional rights had been violated because the prison disciplinary board's decision was not adequately supported by the evidence before the board. They sought restoration of their good time credits and expungement of all references to the incident from their prison records. Pet. App. A2-A3. The court held that there was "no evidence constitutionally adequate to support [the board's] finding" and ordered the restoration of the good time credits (Pet. App. B8). Petitioner appealed, and the Massachusetts Supreme Judicial Court affirmed (Pet. App. A1-A19).[3]

The Supreme Judicial Court first noted that Massachusetts had created a statutory right to good time credits and that respondents therefore had a liberty interest in these credits that could not be affected without the due process guaranteed by the United States Constitution (Pet. App. A9). It then held that an inmate facing the loss of good time credits is entitled under the United States Constitution "not only to the procedural due process articulated in [*Wolff* v. *McDonnell*, 418 U.S. 539 (1974)], but to judicial review of the sufficiency of the evidence to warrant the findings of the disciplinary board as well" (Pet. App. A11). It found that this additional requirement "logically follows" from this Court's decision in *Wolff* v. *McDonnell*, *supra*, that an inmate is entitled to a hearing and statement of reasons before he can be deprived of good time credits (Pet. App.

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[3] Petitioner had appealed the decision to the state appeals court. The Supreme Judicial Court took jurisdiction of the appeal on its own motion (Pet. App. A4-A5).

A10). The court also found that judicial review was necessary to protect inmates against "good faith" decisions of prison administrators that might not be supported by "legally adequate evidence" (Pet. App. A10-A12). It rejected petitioner's arguments that such a rule would impose increased costs upon prison administrators and undercut the goal of swift punishment for violations of prison regulations (Pet. App. A12-A14).

The court stated that the judicial review required under its decision was not "a de novo evidentiary hearing before a judge [and did not] involve judicial second guessing with respect to the credibility of witnesses or the adoption of inferences" (Pet. App. A12). However, it affirmed the trial court's conclusion that, despite Sergeant Maguire's testimony and report, the prison board's determination was not supported by any evidence. Since it found that the board's decision did not meet this standard, the Supreme Judicial Court refused to decide whether a stricter "substantial evidence" standard should govern judicial review of these determinations (Pet. App. A16-A17 & n.5).

SUMMARY OF ARGUMENT

This Court held in *Wolff* v. *McDonnell*, 418 U.S. 539 (1974), that a prison inmate is entitled under the Due Process Clause to certain procedural protections before he can be deprived of good time credits in which he has a liberty interest. The court below stated that due process requires in addition "judicial review of the sufficiency of the evidence" supporting the decision of a prison disciplinary board to revoke an inmate's good time credits (Pet. App. A11). Since state law authorized judicial review of the decisions at issue in this case, it was not necessary for the

court below to determine whether such review is constitutionally required as a matter of due process. The latter question arises only when judicial review is *not* permitted by statute. The portion of the decision below that does rest upon the United States Constitution is the finding that due process supplies a standard against which a reviewing court can measure the sufficiency of the evidence supporting the board's determination.

In other contexts, this Court has held that due process is violated when a governmental decision infringing upon a liberty interest is not based upon any evidence. The court below erred in concluding that this additional procedural requirement is justified solely on the basis of this Court's decision in *Wolff*. However, because a liberty interest is at stake and the requirement would not impose any significant administrative burden, we believe that a decision to revoke good time credits does violate due process if it is not based upon any evidence. The intimation in the decision below that some more stringent standard might apply is, however, incorrect. Such a rule could prolong, and render more complex, any judicial review of these determinations, thereby exacerbating the inmate-administration tensions inherent in the disciplinary process. In addition, it could require prison decisionmakers to produce elaborate written decisions revealing evidence that could threaten the safety of guards or of inmates that cooperate with the prison administration.

In this case, the testimony and report of the prison guard provided evidence to support the decision to revoke respondents' good time credits. Therefore, there was no violation of respondents' due process rights.

ARGUMENT

A DECISION TO REVOKE A PRISON INMATE'S GOOD TIME CREDITS VIOLATES DUE PROCESS ONLY IF IT IS NOT SUPPORTED BY ANY EVIDENCE

This case concerns the process that is due in connection with the revocation of a prison inmate's good time credits.[4] The court below held that in addition to the procedural requirements enumerated by this Court in *Wolff* v. *McDonnell*, *supra*, an inmate is constitutionally entitled to "judicial review of the sufficiency of the evidence" supporting a disciplinary board decision before he can be deprived of good time credits in which he has a liberty interest protected by due process (Pet. App. A11).

Although the decision is phrased in terms of a constitutional right to "judicial review," that issue was not before the court below, and is not before this Court, because Massachusetts law authorizes judicial review of the decisions of prison disciplinary boards. The only portion of the decision below that actually rests upon the United States Constitution is the conclusion that a reviewing court may examine the merits of the board's determination because due process requires that some minimum amount of evidence support a decision to revoke good time credits. Thus, in the view of the court below, a court reviewing a disciplinary board decision may determine whether the inmate was accorded the procedural protections required by *Wolff*, and, in addition, ascertain whether the board's decision is supported by the amount of evidence necessary to satisfy due process.

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[4] Petitioner does not challenge the conclusion of the court below that the state statute creates a liberty interest in good time credits that is protected by due process.

This Court previously has observed that, in some situations, due process requires that "some evidence" support an administrative decision. The court below erred both by failing to analyze properly whether this additional procedural protection is an element of the process that is due in connection with the revocation of good time credits, and by indicating that some higher standard might apply to these determinations. Under this Court's decisions, the revocation of good time credits violates due process only if it is not based upon any evidence.

A. The question whether the Constitution requires judicial review of a claim arises only when the applicable statutes would otherwise bar an aggrieved party from raising his claim in court. If, as in this case, a statute authorizes judicial review, there is no need to determine whether such review is constitutionally required.

For example, in *Johnson* v. *Robison*, 415 U.S. 361 (1974), Robison challenged the constitutionality of a statute that withheld veterans' educational benefits from draftees that had received conscientious objector status. The Court held that consideration of this constitutional claim was not barred by a statute precluding judicial review of decisions of the Veterans Administration. Since the statute did not preclude Robison from asserting his claim, there was no need to determine whether judicial consideration of the issue was constitutionally required. Similarly, in *Weinberger* v. *Salfi*, 422 U.S. 749, 762 (1975), the Court found such constitutional concerns inapposite because "the Social Security Act itself provide[d] jurisdiction for constitutional challenges to its provisions." See also *Investment Annuity, Inc.* v. *Blumenthal*, 609 F.2d 1, 7 (D.C. Cir. 1979), cert. denied, 446 U.S. 981

(1980) (noting that "denial of all access to judicial review" might violate due process).

The Supreme Judicial Court held in the present case that, as a matter of state law, respondents could bring "civil actions in the nature of certiorari" to obtain review of the decision of the prison disciplinary board (Pet. App. A2-A3 n.2), and apparently treated respondents' claim as if it had been presented under that procedure, since petitioner did "not challenge the form of the complaints" (*ibid.*). This form of state law judicial review is designed to "correct errors in proceedings * * * [which] are not otherwise reviewable by motion or by appeal." Mass. Ann. Laws ch. 249, § 4 (Law. Co-op. 1974). An inmate can use this procedure to raise a claim that he has been deprived of good time credits in violation of his due process rights. See *Cepulonis* v. *Commissioner of Corrections*, 15 Mass. App. Ct. 292, 445 N.E.2d 178 (1983).[5] Since the state statute authorizes the state courts to consider any defects in the administrative proceeding, there is no need for this Court to determine whether the Constitution requires judicial review of prison disciplinary board decisions. Thus, the only question raised by this case is whether an inmate has a due process right to a decision supported by some amount of evidence.[6] If he has such a right under the United States Constitution, state law pro-

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[5] Inmates in federal prisons would be able to assert any such claim in a petition for a writ of habeas corpus. See *Jackson* v. *Carlson*, 707 F.2d 943, 946 (7th Cir. 1983), cert. denied, No. 83-5235 (Oct. 3, 1983).

[6] State law apparently does not contain any such judicially-enforceable evidentiary standard. The court below noted that prison disciplinary boards are exempted from the state statute authorizing courts to determine whether an administrative decision is supported by the evidence (Pet. App. A4 n.3).

vides access to the courts in order to vindicate that right.

B. This Court previously has noted that when a government decision results in the forfeiture of an important liberty interest, due process may be violated if the decision is not supported by any evidence. See *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 239 (1957); *United States ex rel. Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 106 (1927); *Tisi* v. *Todd*, 264 U.S. 131, 133-134 (1924); *Ng Fung Ho* v. *White*, 259 U.S. 276, 284 (1922); cf. *Arciniega* v. *Freeman*, 404 U.S. 4 (1971) (per curiam).[7]

The court below held that this procedural protection, at a minimum, applies to proceedings to revoke an inmate's good time credits, and indicated that the Constitution might require that such a decision be supported by a greater quantum of evidence. The court's decision is erroneous in two respects. First, although we agree that some evidence must support decisions to revoke good time credits, the justification for this conclusion set forth in the decision below is fundamentally unsound. Second, the court below erred by intimating that due process may require the application of some higher standard to these decisions.[8]

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[7] Prior to this Court's decision in *Jackson* v. *Virginia*, 443 U.S. 307 (1979), this standard was applied to reverse criminal convictions. *E.g.*, *Vachon* v. *New Hampshire*, 414 U.S. 478 (1974); *Gregory* v. *City of Chicago*, 394 U.S. 111, 112 (1969); *Thompson* v. *Louisville*, 362 U.S. 199 (1960).

Some courts have labeled this requirement "substantive due process," but it plainly is a procedural protection analogous to that required by *Jackson* v. *Virginia*, *supra*.

[8] This case involves the *constitutional* standard applicable on judicial review of these determinations. The initial deci-

The Supreme Judicial Court acknowledged that this Court did not hold in *Wolff* v. *McDonnell*, *supra*, that a decision to revoke an inmate's good time credits must be based upon some quantum of evidence, but the court asserted that "such an entitlement logically follows from [this Court's] holding with respect to the requirements of procedural due process" (Pet. App. A10). This Court in *Wolff* decided that a prisoner could not be deprived of good time credits in which he had a liberty interest unless the state provided the inmate with certain procedural protections: advance written notice of disciplinary charges; the opportunity, in appropriate circumstances, to call witnesses and present documentary evidence; and a written statement by the decisionmaker reciting the evidence relied upon and the reasons for the decision. 418 U.S. at 563-567. The conclusion of the court below apparently is based on its view that these protections necessarily imply the additional procedural requirement that the decision to revoke good time credits must be based upon some evidence.[9]

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sionmaker may apply a more stringent evidentiary standard in reaching his decision. See 28 C.F.R. 541.15(f) (decisions in disciplinary cases in the federal prison system must be "in accordance with the greater weight of the evidence" and "supported by substantial evidence manifested in the record").

[9] The court below also cited this Court's observation in *Wolff* that " 'a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, *and perhaps even the courts*, where fundamental constitutional rights may have been abridged, will act fairly' " (Pet. App. A10, quoting 418 U.S. at 565 (emphasis added by the court below)). However, this passage in *Wolff* indicates only that this Court believed that judicial review of these decisions *might* be available if an inmate had been deprived

The efficacy of notice, a hearing, and a written decision in preventing arbitrary government action does not depend upon the imposition of any other procedural requirement. A hearing is the "fundamental requisite of due process of law" (*Grannis* v. *Ordean*, 234 U.S. 385, 394 (1914)) because "[n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it" (*Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171-172 (1951) (Frankfurter, J., concurring)). See also *Goss* v. *Lopez*, 419 U.S. 565, 579-580 (1975). A written decision demonstrates that the decisionmaker applied the proper rules and based his determination upon the evidence before him. In addition, by creating a written record subject to future scrutiny it tends to ensure that the decisionmaker will act fairly. *Wolff* v. *McDonnell*, 418 U.S. at 565; *Goldberg* v. *Kelly*, 397 U.S. 254, 271 (1970). This Court has never suggested that these procedures are inherently inadequate safeguards against the arbitrary exercise of government power.

Moreover, since notice, a hearing, and a written decision are required in many situations in which the due process guarantee is implicated, a conclusion that they automatically are supplemented by a constitutional evidentiary standard could, as a practical matter, result in the application of such a standard to a wide variety of cases in which government action infringes upon a liberty or property interest. Such a result would be inappropriate where, for example,

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of "fundamental constitutional rights." It does not support the proposition that, as a matter of due process, every prison disciplinary decision must be based upon some minimum amount of evidence.

the challenged government action affects only certain types of property interests. Cf. *Ortwein* v. *Schwab*, 410 U.S. 656, 659-660 (1973).

Finally, by basing its decision upon *Wolff*, the court below ignored the methodology that this Court consistently has applied to determine the process that is due in connection with a deprivation of liberty or property. This analysis requires the consideration of three factors: the private interest affected by the government action, the risk of erroneous deprivation of that interest, and the government's interest in both the function at issue and the administrative burdens that would result from the additional procedure. *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976); see also *Hewitt* v. *Helms*, 459 U.S. 460, 473 (1983); *Parham* v. *J.R.*, 442 U.S. 584, 599-600 (1979); *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

In the present context, because an inmate's actual liberty is at stake, and because little additional administrative burden would result, we believe that it is appropriate under this test to require that some evidence support a decision to revoke good time credits. This conclusion has been reached by virtually all of the courts of appeals that have addressed the issue. *Adams* v. *Gunnell*, 729 F.2d 362, 370 (5th Cir. 1984); *Smith* v. *Rabalais*, 659 F.2d 539, 545 (5th Cir. 1981), cert. denied, 455 U.S. 992 (1982); *Willis* v. *Ciccone*, 506 F.2d 1011, 1018, 1019 n.11 (8th Cir. 1974); *Inglese* v. *Warden, U.S. Penitentiary*, 687 F.2d 362, 363 (11th Cir. 1982); cf. *Rusher* v. *Arnold*, 550 F.2d 896, 899 (3d Cir. 1977).[10]

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[10] One Seventh Circuit decision applied a "substantial evidence" standard. *Aikens* v. *Lash*, 514 F.2d 55, 60-61 (1975), vacated, 425 U.S. 947, modified, 547 F.2d 372 (7th Cir.

We believe, however, that there is no support for the suggestion by the court below that a more stringent "substantial evidence" standard might apply in this context (Pet. App. A17 n.5). First, this Court has never found such a standard applicable as a matter of due process. Although the Court held in *Jackson* v. *Virginia*, 443 U.S. 307 (1979), that the Constitution requires proof beyond a reasonable doubt in order to uphold a criminal conviction, the rationale of that case is not applicable here. In *Wolff* v. *McDonnell*, *supra*, the Court recognized that although "[t]he deprivation of good time is unquestionably a matter of considerable importance," it does not "work any [immediate or wholly certain] change in the conditions of [the inmate's] liberty" and differs in other significant respects from a criminal conviction (418 U.S. at 561). Accordingly, the liberty interest in good time credits is of a substantially lesser magnitude than the liberty interest implicated by a criminal conviction.[11]

Second, important considerations weigh against the adoption of a more stringent standard. Prison dis-

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1976). However, a recent Seventh Circuit opinion relies upon the decisions of the other courts of appeals and interprets this standard in a manner that appears to be close to the some evidence test. *Jackson* v. *Carlson*, 707 F.2d at 949. See also note 12, *infra*.

[11] The decisions of this Court in which a heightened burden of proof at trial was found to be constitutionally required also rest upon the conclusion that the liberty interest involved was "significant" or "fundamental." *E.g.*, *Santosky* v. *Kramer*, 455 U.S. 745, 753, 756-757 (1982); *Addington* v. *Texas*, 441 U.S. 418, 425-426 (1979). Even in these situations, however, the scope of any judicial review can be narrower than the burden of proof at the trial stage. See *Woodby* v. *INS*, 385 U.S. 276, 282 (1966).

ciplinary proceedings "take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so" (*Wolff*, 418 U.S. at 561). Although some prisoners may be amenable to reform, others "may be incorrigible and would merely disrupt and exploit the disciplinary process for their own ends" (*id.* at 563). These considerations, along with the paramount goal of ensuring the safety of both guards and inmates, must be taken into account in determining whether the Constitution requires the imposition of an additional procedural requirement in this setting. *Block* v. *Rutherford*, No. 83-317 (July 3, 1984), slip op. 8-9; *Hudson* v. *Palmer*, No. 82-1630 (July 3, 1984), slip op. 6, 9; *Hewitt* v. *Helms*, 459 U.S. at 467; *Bell* v. *Wolfish*, 441 U.S. 520, 547 (1979); *Wolff* v. *McDonnell*, 418 U.S. at 563.

An evidentiary standard more stringent than the some evidence test would most likely complicate and prolong any judicial review of disciplinary actions.[12] It therefore could enable disruptive inmates to manipulate the disciplinary system to impose additional burdens on prison authorities. Complex judicial review proceedings also would lengthen the entire disciplinary process, and increase the opportunity for conflict between the inmate, prison authorities, and

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[12] In some circumstances, the "substantial evidence" standard may be close to the requirement of "some evidence." See *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 229 (1938) (substantial evidence is "evidence * * * a reasonable mind might accept as adequate to support a conclusion"). However, in the view of the court below, it would require a reviewing court to survey the entire record and weigh the evidence (Pet. App. A17 n.5). That approach obviously would result in a more complex review proceeding.

the victim or informant (see *Wolff*, 418 U.S. at 562). In addition, such a standard could subvert this Court's decision in *Wolff* that some items of evidence may be omitted from written disciplinary decisions in order to protect "personal or institutional safety" (*id.* at 565). Prison officials probably would be required to establish more comprehensive evidentiary records and write more elaborate decisions in response to the demands of reviewing courts. Such a standard of judicial review, in sum, would "very likely raise the level of confrontation between staff and inmate, and make more difficult the utilization of the disciplinary process as a tool to advance the rehabilitative goals of the institution" (*id.* at 563). The some evidence standard, by contrast, protects inmates against arbitrary decisions while reducing the uncertainty that disciplinary sanctions will prevail, and can be applied easily by a reviewing court on the basis of the written decision already required by *Wolff*. For all of these reasons, a more stringent constitutional standard is not appropriate in this setting.

C. Under the some evidence standard, "it is sufficient that there was some evidence from which the conclusion of the administrative tribunal could be deduced." *United States ex rel. Vajtauer* v. *Commissioner of Immigration*, 273 U.S. at 106; see also *Tisi* v. *Todd*, 264 U.S. at 133. The record in this case is not so devoid of evidence as to fall short of this standard. The prison guard who arrived at the scene immediately after the assault observed respondents leaving the area, which was enclosed by a fence, and saw no other inmates in the vicinity (Pet. App. A7). His testimony and report constitute "some evidence" supporting the board's inference of guilt. See *Inglese* v. *Warden, U.S. Penitentiary*, 687 F.2d at 363 (up-

holding decision based upon some evidence, "albeit meager").[13] Since this case does not present a situation in which there is no evidence underlying the revocation of good time credits, respondents' due process rights have not been violated.

CONCLUSION

The judgment should be reversed.

Respectfully submitted.

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DECEMBER 1984

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[13] The cases relied upon by the courts below (Pet. App. A18, B4-B6) concern the sufficiency of the evidence to support a criminal conviction, and therefore are not relevant in determining whether the decision was supported by any evidence.

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